IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

OP.No. 37641 OF 2002(F)

PETITIONER:

SRI.J.D.AMBIAH, GROUNDNUT DEALER,
NEAR TELEPHONE BHAWAN, KANNUR.

BY ADV. SRI.T.M.SREEDHARAN

RESPONDENTS:

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1. THE INTELLIGENCE OFFICER,
OFFICE OF THE A.I.C(I),
A.I.T. & S.T., KANNUR.

2. THE DY.COMMISSIONER,
COMMERCIAL TAXES, KANNUR.

3. THE COMMISSIONER, COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P. NO. 37641/2002

ORDER ON CMP NO. 63541/2002 IN O.P. 37641/2002

// DISMISSED //

24TH MAY, 2007. SD/-
P.R. RAMAN, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	TRUE COPY OF THE ORDER NO. I.S.(C) 221/92-93 DATED 16.12.1994 OR 187/92-93, PASSED BY THE 1ST RESPONDENT.
EXT.P2	TRUE COPY OF THE ORDER IN RP NO. 195/94 DATED 12.9.2001 PASSED BY THE 2ND RESPONDENT.
EXT.P3	TRUE COPY OF THE NOTE ON THE SUBMISSIONS MADE BY THE ADVOCATE.
EXT.P4	TRUE COPY OF THE ORDER IN STRP 19/01 DATED 28.10.2002, PASSED BY THE 3RD RESPONDENT.
EXT.P5	TRUE COPY OF THE TRADING ACCOUNT FOR THE YEAR ENDED 31.3.1993 PRODUCED BY THE PETITIONER.

RESPONDENTS' EXHIBITS:

NIL.

// TRUE COPY //

P.S. TO JUDGE.

knc/-

P.R. RAMAN, J.

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O.P. NO. 37641 OF 2002

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DATED THIS, THE 24TH DAY OF MAY, 2007.

J U D G M E N T

Petitioner is an assessee under the Kerala General Sales Tax Act. He is a dealer in Ground nut. The Intelligence Officer who conducted an inspection in the business premises of the petitioner found that he has not accounted for the purchase of 22 Demand Drafts, details of which are shown in Ext.P1 proceedings. According to him, the assessee has colluded with the suppliers and has resorted to undervaluation. He quantified the cheques and fixed a penalty double the amount of tax due on the unaccounted purchases. Aggrieved thereby, the petitioner preferred a revision before the second respondent - Deputy Commissioner, Commercial Taxes, Kannur, who reduced the penalty to Rs. 15,000/-, after entering a finding as follows:

> "I have considered the arguments and gone through the records of the case. On the outset it can be said that there is some irregularity in accounting in as much as the same was not done in the ordinary course of business. On the other hand, it is equally true that the Intelligence Officer has not made a meticulous examination of the

> case. The purchase of D.D. for Rs. 15,000/- mentioned above was treated by the Intelligence Officer as unaccounted where in fact it was accounted. Likewise the Intelligence Officer has ignored the accounted purchases which compare favourably with the prevailing market rate which the Intelligence Officer himself has adopted for making a case of undervaluation."

2. Therefore, he clearly found that the finding of the Intelligence Officer that the purchase of Demand Drafts was not accounted is clearly wrong. According to the Deputy Commissioner, there was some irregularity in the matter of maintenance of accounts for which purpose he imposed a penalty of Rs. 15,000/-. The assessee, aggrieved by the limited relief granted by the Deputy Commissioner, has preferred a further revision before the Commissioner, Commercial Taxes, Thiruvananthapuram, the third respondent in this original petition, who disposed of the same by Ext.P4 order dated 28.10.2002. In Ext.P4, the Commissioner has observed thus:

> "Though the Deputy Commissioner has found that one of the purchases for Rs. 15,000/- had been accounted, he does not appear to have examined the matter in detail in respect of the other purchases. Similarly, though the Deputy Commissioner has observed that the purchase price compares favourably with the prevailing market rate, the basis on which such an observation has been made is not clear. The materials available on

> record show clearly that the petitioner had failed to keep true and complete accounts and that some of the purchases in question had not been accounted. ....."

3. As a matter of fact, no revision was filed by the Department. The Deputy Commissioner, having found that there is no unaccounted purchase, reduced the penalty to Rs. 15,000/-. The Commissioner agreed with the said finding and dismissed the revision. Aggrieved thereby, the petitioner has come up with this original petition.

4. It is the contention of the learned counsel for the petitioner that at the relevant point of time, the maximum penalty that was imposable was only Rs. 5,000/- when it was not practicable to quantify the evasion. In this case, there is no finding regarding evasion. The failure to keep true and complete accounts, certainly falls under Section 45(b) of the Kerala General Sales Tax Act. Hence though it is possible to impose a penalty on the petitioner, in the absence of any finding that there is any evasion of tax, the maximum penalty that could be imposed being only Rs. 5,000/-, the order imposing penalty in excess of the maximum amount is not sustainable in the eye of law. Accordingly, the orders passed by the Deputy Commissioner, as affirmed by the Commissioner of Commercial Taxes vide Exts.P2 and P4 are set aside to the limited extent of imposition of penalty in

excess of Rs. 5,000/-, as it stood at the relevant point of time. In other words, penalty of an amount of Rs. 5,000/- alone is sustained.

The original petition is allowed as above.

P.R. RAMAN,
(JUDGE)

knc/-

P.R. RAMAN, J.
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O.P. NO. 37641 OF 2002
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J U D G M E N T

DATED: 24.5.2007.